

Montana Water Court
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FILED
02/28/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
76HA-0175-P-2017
Stern, Anika
41.00

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
MAINSTEM BITTERROOT RIVER AND EAST SIDE SUBBASIN (76HA)

* * * * *

CLAIMANTS: Dorinda H. Troutman; Theodore N. Troutman; Theresa
Troutman; Christopher Magee; William D. Plummer

OBJECTORS: Kay S. Cassens; United States of America (Bureau of
Reclamation)

CASE 76HA-0175-P-2017
76H 99725-00
76H 99726-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. The record owners of claims 76H 99725-00 and 76H 99726-00 are Christopher Magee, William D. Plummer, Dorinda H. Troutman, Theodore N. Troutman, and Theresa Troutman.

2. Claims 76H 99725-00 and 76H 99726-00 were decreed with DNRC issue remarks:

76H 99725-00:

THE CLAIMED CONVEYANCE DITCH CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 01/24/1995 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY KAY CASSENS.
ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 11/28/2007 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY THEODORE AND DORINDA TROUTMAN.
THE CLAIMED POINT OF DIVERSION MAY BE INCOMPLETE. IT APPEARS THERE SHOULD BE ADDITIONAL POINTS OF DIVERSION ON BIRCH CREEK WHICH COULD NOT BE IDENTIFIED FROM INFORMATION IN THE CLAIM FILE.
THE RAVALLI COUNTY WATER RESOURCES SURVEY (1958) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
USDA AERIAL PHOTOGRAPH NO(S). 179-142 , DATED 08/02/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

76H 99726-00:

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 01/19/1999 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY KENNETH AVERY SMITH.
ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 11/28/2007 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY KAY S. CASSENS AND K. S. CASSENS, TRUSTEE.
ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 11/28/2007 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY THEODORE AND DORINDA TROUTMAN.
THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.
USDA AERIAL PHOTOGRAPH NO. 179-142 , DATED 08/02/1979 APPEARS TO INDICATE 13.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 323.0 TIMES THE CAPACITY OF THE RESERVOIR.
VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

3. Kay Cassens objected to claims 76H 99725-00 and 76H 99726-00; the Objections were withdrawn on March 26, 2018. The United States of America (Bureau of Bureau of Reclamation) objected to claim 76H 99725-00.

Claim 76H 99725-00:

4. On September 20, 2022, the Bureau of Reclamation file a Motion for Summary Judgment arguing that claim 76H 99725-00 does not represent a valid right. On November 14, 2022, this Master issued an Order Granting Motion for Summary Judgment. The Order stated:

The Bureau of Reclamation's undisputed facts demonstrate that claim 76H 99725-00 has been abandoned and or was never perfected for irrigation use. Claimants' admissions and the evidentiary record establish continuous non-use of the claim since 1955, a period of non-use sufficient to give rise to a presumption of abandonment and shifting the burden to the Claimants to explain the non-use.

Claimants cannot meet that burden because Claimants have not disclosed or produced any relevant evidence during discovery. Accordingly, Claimants cannot meet their obligation to “set out specific facts showing a genuine issue for trial,” Mont. R. Civ. P. 56(e), based on “material and substantial evidence.” *Clark v. Eagle Sys., Inc.*, 279 Mont. 279, 283 (Mont. 1996).

Claim 76H 99726-00:

5. The Claimants were ordered to meet with the DNRC to address the following unresolved issue remarks decreed on claim 76H 99726-00:

USDA AERIAL PHOTOGRAPH NO. 179-142 , DATED 08/02/1979 APPEARS TO INDICATE 13.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 323.0 TIMES THE CAPACITY OF THE RESERVOIR.
VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

6. On January 6, 2023, DNRC Water Resource Specialists Kimberly Brown and Garrett Musso (Brown and Musso) filed a Memorandum, a copy is attached. The Memorandum stated Brown and Musso were not contacted by the Claimants; nevertheless, they made recommendations for the disposition of the issue remarks. Brown and Musso indicated they reviewed the claim 76H 99726-00 file, a form GW4, and aerial photographs to prepare the Memorandum. Brown and Musso stated the following regarding the place of use/irrigated acres:

This water right claim is for 89.0 acres of sprinkler irrigation from a manmade pit.

During initial examination of the claimed place of use, DNRC concluded that USDA aerial photograph #179-142 indicates 13.0 acres of irrigation in 1979, which resulted in an issue remark being added to this claim. (The Ravalli County Water Resources Survey could not be used as a second data source to determine historical irrigation since the survey was completed in 1958 and the date of first use for this claim is 1963.) Yet, a 1964 aerial photo from the Missoula Regional Office can be used as a second data source, and it confirms that only the examined 13.0 acres, out of 89 claimed, were historically irrigated (see attached 1964 aerial photograph).

However, DNRC was unable to verify that the 5.0 acres claimed in the SWNE of Section 12, of the 13 examined, were irrigated by sprinklers fed by the manmade pit located in the SENESW of Section 12. It appears these 5 acres are only flood irrigated from the Bitterroot Irrigation District (BRID) canal, which runs directly along their eastern border. The attached 1955 Water Resources Survey aerial photograph clearly shows lateral striations that indicate flood irrigation from the BRID canal occurred on the SWNE of Section 12 *before* the sump for this water right was dug in 1963. The attached 1964 and 1979 aerial photographs display the same laterals as the 1955 aerial photograph that indicate flood irrigation from the canal. It appears there was no change in the method of irrigation from 1955 to 1979. For this reason, it appears the source claimed for water right 76H 99726-00 was not utilized to irrigate the 5 acres in the SWNE of Section 12.

Furthermore, there is no evidence that water is conveyed from the pit, located in the SENESW of Section 12, to the SWNE of Section 12. The claim file contains no information regarding a means of conveyance, which would be necessary to utilize the water in the SWNE of Section 12. Therefore, while the SWNE of Section 12 does appear irrigated, it is unlikely that it is irrigated from the source on which this claim is based. Only the **8.0 acres** in the NESW of Section 12 appear irrigated from the pit.

Brown and Musso recommended the place of use be reduced, as follows:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	40.00		SWNE	12	7N	20W	RAVALLI
Subdivision: MOUNTAIN VIEW ORCHARDS TRACT/LOT: 4 BLOCK: 8							
2	40.00		NWSE	12	7N	20W	RAVALLI
3	8.00	9.00	NESW	12	7N	20W	RAVALLI
Subdivision: MOUNTAIN VIEW ORCHARDS TRACT/LOT: 3 BLOCK: 8							
Total:	88.00	8.00					

A map showing the recommended place of use was attached to the Memorandum and is included with the Memorandum attached to this Report.

Brown and Musso recommended the reservoir measurements be modified consistent with the form G4 (Declaration of Vested Groundwater Rights Form):

Diversion to Reservoir: DIVERSION # 1
 Dam Height: 10.00 FEET
 Surface Area: 0.11 0.24-ACRES
 Capacity: 0.57 1.20-ACRE-FEET

And Brown and Musso recommended the volume of claim 76H 99726-00 be reduced from 366.00 AC-FT to 1.14 AC-FT, based on the capacity of the reservoir.

7. On January 9, 2023, an Order was issued setting a deadline for the Claimants to file statements agreeing or disagreeing with the changes recommended by the DNRC by February 16, 2023. The Order indicated that if nothing were filed by the February 16, 2023 deadline, this Water Master would conclude the Claimants agree with the recommended changes to claim 76H 99726-00.

8. The January 9, 2023 Order also identified Kenneth Smith as a potential co-owner of claim 76H 99726-00 and it notified Kenneth Smith of his potential interest in the claim. The Order set a February 10, 2023 deadline for Kenneth Smith to update ownership or this Water Master would conclude Kenneth Smith did not intend to pursue ownership in claim 76H 99726-00.

Additionally, the January 9, 2023 Order indicated that if Kenneth Smith intended to file an ownership update, he should file a statement agreeing or disagreeing the changes recommended by the DNRC by February 16, 2023. The Order indicated that if

nothing were filed by the deadline, this Water Master would conclude Kenneth Smith agrees with the proposed changes.

On February 13, 2023, Garrett Musso sent an email to this Water Master:

From: Musso, Garrett <Garrett.Musso2@mt.gov>
Sent: Monday, February 13, 2023 11:02 AM
To: Stern, Anika <astern@mt.gov>
Subject: CASE 76HA-0175-P-2017

Dear Water Master Stern:

The purpose of this email is to provide an update on case 76HA-0175-P-2017. In your order, you set a deadline of February 10, 2022 for Kenneth Smith to contact the DNRC and to file an ownership update if he has an interest in statement of claim 76H 99726-00. I wanted to inform you that Mr. Smith called me on January 30th to and to let me know that he has an interest in the claim, and to ask how to file the ownership update; he is currently in Arizona. Today (February 13th), Mr. Smith contacted me again to make sure he had everything properly documented, and is mailing the ownership update form with the fee to the Missoula Regional Office today.

Best,

Garrett Musso
Water Rights Adjudication Specialist
Department of Natural Resources & Conservation
Water Resources Division

As of the drafting of this Order (on February 21, 2023) no ownership update has been recorded in the DNRC database for Kenneth Smith as to claim 76H 99726-00.

9. The following language was included in the January 9, 2023 Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. The period of diversion issue remark decreed on claim 76H 99726-00 is a notice-type issue remark. As the Objection has been resolved, no further proceedings are required.

RECOMMENDATIONS

1. Pursuant to the November 14, 2022 Order Granting Motion for Summary Judgment, claim 76H 99725-00 should be dismissed.

2. Claim 76H 99726-00 should be modified as described in the Findings of Facts.

3. The issue remarks should be removed from claim 76H 99726-00.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

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Dorinda H. Troutman
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dorindatroutman@centurylink.net

Theresa Troutman
1725 Stoddard St.
Missoula, MT 59802

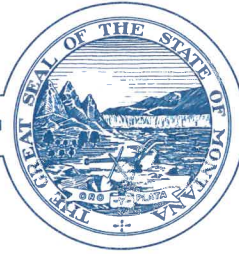
Kenneth Avery Smith
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(Potential Owner)

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DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION
MISSOULA WATER RESOURCES REGIONAL OFFICE



GREG GIANFORTE
GOVERNOR

2705 SPURGIN ROAD, BLDG. C,
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STATE OF MONTANA

(406) 721-4284
FAX (406) 542-5899

MISSOULA, MONTANA 59806-5004

ELECTRONICALLY FILED

MEMORANDUM

76HA-0175-P-2017

January 6, 2023

DATE: January 6, 2023

CASE HEADING: 76HA-0175-P-2017

Montana Water Court

CLAIM NUMBER: 76H 99726-00

TO: Anika Stern, Water Master

FROM: Kimberly Brown, Water Resource Specialist
Garrett Musso, Water Resource Specialist

CLAIMANT(S): Dorinda H. Troutman, Theodore N. Troutman, Theresa Troutman,
Christopher Magee, William D. Plummer

OBJECTOR(S): Kay Cassens, United States of America (Bureau of Reclamation)

INTRODUCTION:

Per the Water Court, the claimants were ordered to make an appointment to confer with the DNRC no later than December 2, 2022 and to submit documents by December 16, 2022 to resolve the place of use and volume issue remarks on this claim. As of this date, none of the claimants have contacted DNRC or submitted any documents to resolve the issues.

MATERIALS REVIEWED:

- Information in water right 76H 99726-00 scanned claim file
- Declaration of Vested Groundwater Rights (Form GW4)
- USDA-FS Aerial Photo #CNR-2DD-136, dated 07/26/1964
- Water Resources Survey Aerial Photo #CNR-3P-2A, dated 08/01/1955
- USDA Aerial Photo #179-142, dated 08/02/1979

DISCUSSION:

This water right claim is for 89.0 acres of sprinkler irrigation from a manmade pit.

During initial examination of the claimed place of use, DNRC concluded that USDA aerial photograph #179-142 indicates 13.0 acres of irrigation in 1979, which resulted in an issue remark being added to this claim. (The Ravalli County Water Resources Survey could not be used as a second data source to determine historical irrigation since the survey was completed in 1958 and the date of first use for this claim is 1963.) Yet, a 1964 aerial photo from the Missoula Regional Office can be used as a second data source, and it confirms that only the examined 13.0 acres, out of 89 claimed, were historically irrigated (see attached 1964 aerial photograph).

However, DNRC was unable to verify that the 5.0 acres claimed in the SWNE of Section 12, of the 13 examined, were irrigated by sprinklers fed by the manmade pit located in the SENESW of Section 12. It appears these 5 acres are only flood irrigated from the Bitterroot Irrigation District (BRID) canal, which runs directly along their eastern border. The attached 1955 Water Resources Survey aerial photograph clearly shows lateral striations that indicate flood irrigation from the BRID canal occurred on the SWNE of Section 12 *before* the sump for this water right was dug in 1963. The attached 1964 and 1979 aerial photographs display the same laterals as the 1955 aerial photograph that indicate flood irrigation from the canal. It appears there was no change in the method of irrigation from 1955 to 1979. For this reason, it appears the source claimed for water right 76H 99726-00 was not utilized to irrigate the 5 acres in the SWNE of Section 12.

Furthermore, there is no evidence that water is conveyed from the pit, located in the SENESW of Section 12, to the SWNE of Section 12. The claim file contains no information regarding a means of conveyance, which would be necessary to utilize the water in the SWNE of Section 12. Therefore, while the SWNE of Section 12 does appear irrigated, it is unlikely that it is irrigated from the source on which this claim is based. Only the **8.0 acres** in the NESW of Section 12 appear irrigated from the pit.

Given the recommended acreage, the standard volume for irrigating 8.0 acres should be calculated as follows, to resolve the V55 issue remark:

$$\begin{aligned} (\text{acres}) \times (\text{Climatic Area Volume Value}) &= \text{Volume (AF)} \\ 8.0 \text{ acres} \times 10.2 \text{ (Climatic Area II)} &= 81.6 \text{ acre-feet (AF)} \end{aligned}$$

To address the V40 volume issue remark, DNRC was unable to visually locate the manmade pit on any aerial photographs to determine its dimensions. A Declaration of Vested Groundwater Rights (Form GW4) filed by Elmer Phipps in 1963 contains detailed information regarding the pit. Item 9 on the attached GW4 describes the historic dimensions of the pit, which can be used to calculate its capacity using the following standard equation:

$$\frac{(\text{length in feet}) \times (\text{width in feet}) \times (\text{depth in feet}) \times (0.5)}{43,560} = \text{Capacity (AF)}$$

$$\frac{(100 \text{ ft}) \times (50 \text{ ft}) \times (10 \text{ ft}) \times (0.5)}{43,560} = \mathbf{0.57AF}$$

The claimed volume of 366 AF is 642 times the capacity of the reservoir, according to our calculations. The standard volume for this climatic area would be 81.6 AF, which is still 143 times the capacity of the reservoir. It does not appear that the claimed volume, nor the standard volume, is feasible given the dimensions of the pit pertinent to this claim. Since the claimants never contacted DNRC, the DNRC is left to rely on available information to determine the feasibility for the volume of this claim.

Chapter VII, Section C of the Water Rights Claim Examination Manual states that “when the claimed volume is greater than 15 AF and exceeds the above [climatic area] values or is greater than 2 times the capacity of the reservoir,” a volume issue remark must be attached to the claim. Rule 15(h).5.ii. of the Supreme Court Water Right Claim Examination Rules states that a volume remark is required if “the claimed volume to be decreed is greater than two times the capacity of the reservoir or exceeds a reasonable number of fills.” Therefore, for the V40 issue remark on this claim to be resolved, the volume of this claim cannot exceed **1.14 AF**, which is 2 times the capacity of the reservoir.

RECOMMENDATIONS:

DNRC could not find any evidence to support the feasibility of irrigating the SWNE of Section 12 from the claimed source. Therefore, DNRC recommends that the maximum acres and place of use be changed to the following, and that the P272 place of use issue remark be removed from this claim, as it is resolved:

8.0 acres NE ¼ SW ¼ SEC 12 T07N R20W RAVALLI
= 8.0 Maximum Acres (see attached DNRC Map)

NOTE: Based on this recommendation, the only valid geocode on this water right should be: 13-1565-12-1-01-12-0000; which is owned by Kenneth Smith.

Based on the standard calculation for pit volume and the feasibility check, DNRC recommends the volume be changed to a value \leq **1.14 AF** to resolve the V40 issue remark. This also resolves the V55 issue remark. Both of the volume issue remarks should be removed from this claim.

Per the GW4 Filing and the calculations above, the Capacity of the pit should also be changed to **0.57 acre-feet**, the Surface Area should be changed to **0.11 acres**, and the R56 reservoir remark should be removed from this claim, as it is no longer applicable.

ENCLOSURES:

USDA-FS Aerial Photo #CNR-2DD-136, dated 07/26/1964
Ravalli County Water Resources Survey Aerial Photo #CNR-3P-2A, dated 08/01/1955
USDA Aerial Photo #179-142, dated 08/02/1979
Declaration of Vested Groundwater Rights (Form GW4)
DNRC Recommended Place of Use Map
Draft Abstract

SIGNED

By: Kimberly Brown January 6, 2023

Kimberly Brown, Water Resource Specialist
406-542-5882 kbrown3@mt.gov

By: Garrett Musso January 6, 2023

Garrett Musso, Water Resource Specialist
406-542-8888 garrett.musso2@mt.gov

REVIEWED

By: [Signature] January 6, 2023

Jim Nave, Missoula Regional Manager

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Anika Stern, Water Master
Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389

7-26-64

T7N R19W

CNR-2DD-136

$\frac{1}{2} \frac{6}{7}$

$\frac{6}{7} \frac{5}{8}$

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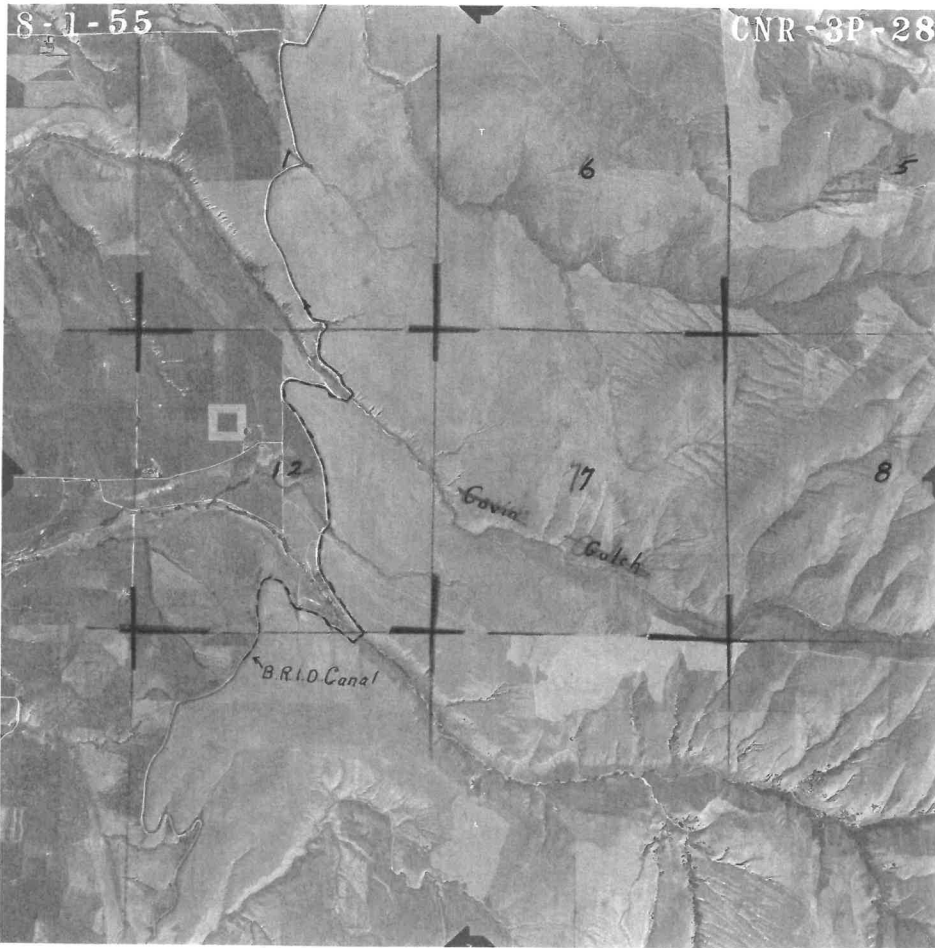
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File No.

ORIGINAL

99726

T 7 N. R 20 W.

Ravalli County

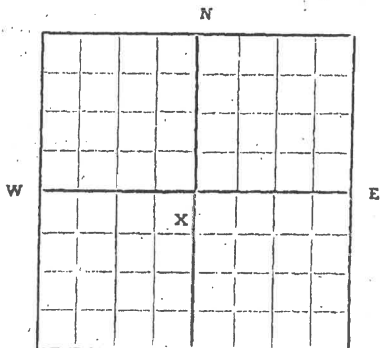
STATE OF MONTANA
ADMINISTRATOR OF GROUNDWATER CODE
OFFICE OF STATE ENGINEER

Declaration of Vested Groundwater Rights

(Under Chapter 237, Montana Session Laws, 1961)

1. Elmer Phipps and Sadie B. Phipps of Corvallis, Montana
(Name of Appropriator) (Address) (Town)

County of Ravalli, State of Montana, have appropriated groundwater according to the Montana laws in effect prior to January 1, 1962, as follows:



Lots 3 & 4; Block 8, Mtn. View Orchards

NE 1/4 SW 1/4 Sec. 12, T. 7, N. R. 20, W.

Indicate point of appropriation and place of use, if possible. Each small square represents 10 acres.

2. The beneficial use on which the claim is based irrigation and stock water
3. Date or approximate date of earliest beneficial use; and how continuous the use has been Aug. 31, 1963 and continuous thereafter
4. The amount of groundwater claimed (in miner's inches or gallons per minute) 40 inches
5. If used for irrigation, give the acreage and description of the lands to which water has been applied and name of the owner thereof SW 1/4 NE 1/4, NW 1/4 SE 1/4, Lot 3, Bl. 8, Mtn. View Orchard
6. The means of withdrawing such water from the ground and the location of each well or other means of withdrawal Sump 10 ft. deep with electrically driven pump

7. The date of commencement and completion of the construction of the well, wells, or other works for withdrawal of groundwater Began June 15, 1963; completed Aug. 31, 1963
8. The depth of water table 8 ft.
9. So far as it may be available, the type, size and depth of each well or the general specifications of any other works for the withdrawal of groundwater Sump 10 ft. deep and 50 feet x 100 feet in length and breadth
10. The estimated amount of groundwater withdrawn each year 9,720,000
11. The log of formations encountered in the drilling of each well if available Gravel with sand entire depth
12. Such other information of a similar nature as may be useful in carrying out the policy of this act, including reference to book and page of any county record

Signature of Owner

Elmer Phipps
Sadie B. Phipps

Date Sept. 9, 1963

Three copies to be filed by the owner with the County Clerk and Recorder of the county in which the well is located.

Please answer all questions. If not applicable, so state, otherwise the form will be returned.

Original to the County Clerk and Recorder; duplicate to the State Engineer; Triplicate to the School of Mines and Quadruplicate for the Appropriator.

STATE OF MONTANA

County of Ravalli

ss.

Elmer Phipps and Sadie B. Phipps having first been duly sworn, depose ---- and
say ---- that ---- they are of lawful age and ---- the appropriators
---- and claimant S. ---- of the order and water right mentioned in the foregoing declaration
of vested groundwater rights and the person S. ---- whose name S. ---- are ---- subscribed thereto,
as the appropriator S. ---- and claimant S. ----, that ---- they know ---- the contents
of said foregoing notice and that the matters and things therein stated are true.

Elmer Phipps
Sadie B. Phipps

Subscribed and sworn to before me, this 9th day of September, 19 63.

D. McKenna
Notary Public for the State of Montana.

Residing at Hamilton, Montana.

My Commission expires May 2, 1964.

(SEAL)

99726

1819

52504

Elmer Phipps & Sadie B. Phipps

I certify that I received and filed this
instrument on this 13th
of Sept., 19 63, at 3:20
P. M.

F. S. Moore
COUNTY RECORDER

DEPUTY

Fee \$2.00

Department of Natural Resources and Conservation Map for Case 76HA-175-P-2017 Memorandum



Water Right No: 76H 99726-00

Section, Township, Range, County: Sec.12, T07N, R20W; Ravalli County

Photo #: USDA Aerial Photo(s): 179-142

Total Acres: 8.0 Acres



- Point of Diversion
- Place of Use



0 0.2 0.4 0.8 Miles

DRAFT

REVIEW ABSTRACT OF WATER RIGHT CLAIM

IMPORTANT NOTICE

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED IN ACCORDANCE WITH THE SUPREME COURT RULES GOVERNING THE EXAMINATION OF THIS CLAIM.

Water Right Number: 76H 99726-00 STATEMENT OF CLAIM
Version: 1 -- ORIGINAL RIGHT
Status: ACTIVE

Owners: CHRISTOPHER MAGEE
296 MATHER ST APT #6
OAKLAND, CA 94611

WILLIAM D PLUMMER
1074 BIRCH CREEK LOOP
CORVALLIS, MT 59828-9547

DORINDA H TROUTMAN
PO BOX 174
HAMILTON, MT 59840-0174

THEODORE N TROUTMAN
PO BOX 174
HAMILTON, MT 59840-0174

THERESA TROUTMAN
1725 STODDARD ST
MISSOULA, MT 59802

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 11/28/2007, A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY KAY S. CASSENS AND K. S. CASSENS, TRUSTEE.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 01/19/1999, A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY KENNETH AVERY SMITH.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 11/28/2007, A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY THEODORE AND DORINDA TROUTMAN.

OWNER DORINDA H TROUTMAN RETAINED. CONTRACT FOR DEED INTEREST.

OWNER THEODORE N TROUTMAN RETAINED. CONTRACT FOR DEED INTEREST.

Priority Date: AUGUST 31, 1963

Enforceable Priority Date: AUGUST 31, 1963

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

* **Volume:** ~~366.00~~ AC-FT
≤ 1.14

Climatic Area: 2 - MODERATELY HIGH

~~THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE.~~
~~THE CLAIMED VOLUME EQUALS 323.0 TIMES THE CAPACITY OF THE RESERVOIR.~~
~~VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM~~
~~ACRES ISSUE.~~

*

Maximum Acres: ~~89.00~~ 8.0

Source Name: MANMADE PIT, UNNAMED TRIBUTARY OF BIRCH CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENESW	12	7N	20W	RAVALLI

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: PIT

Subdivision: MOUNTAIN VIEW ORCHARDS TRACT/LOT: 4 BLOCK: 8

PUMP IS SECONDARY MEANS OF DIVERSION.

WATER FROM BIRCH CREEK IS DIVERTED BY MEANS OF A SUMP LOCATED
ADJACENT TO THE SOURCE.

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENESW	12	7N	20W	RAVALLI

Diversion to Reservoir: DIVERSION # 1

Dam Height: 10.00 FEET

* Surface Area: ~~0.24 ACRES~~ 0.11

* Capacity: ~~1.20 ACRE-FEET~~ 0.57

~~THE SURFACE AREA HAS BEEN ESTIMATED BY DNRC.~~

Period of Use: APRIL 1 to OCTOBER 1

*

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	40.00		SWNE	12	7N	20W	RAVALLI

~~Subdivision: MOUNTAIN VIEW ORCHARDS TRACT/LOT: 4 BLOCK: 8~~

2	40.00		NWSE	12	7N	20W	RAVALLI
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* 3 8.0 ~~9.00~~ NESW 12 7N 20W RAVALLI

Subdivision: MOUNTAIN VIEW ORCHARDS TRACT/LOT: 3 BLOCK: 8

Total: ~~89.00~~
8.0

~~USDA AERIAL PHOTOGRAPH NO. 179-142 DATED 08/02/1979 APPEARS TO INDICATE~~
~~13.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE~~

Remarks:

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BITTERROOT RIVER
BASIN 76H**

Water Right Number: 76H 99725-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: DISMISSED

Owners:

WILLIAM D PLUMMER
1074 BIRCH CREEK LOOP
CORVALLIS, MT 59828 9547

THEODORE N TROUTMAN
PO BOX 174
HAMILTON, MT 59840 0174

DORINDA H TROUTMAN
PO BOX 174
HAMILTON, MT 59840 0174

THERESA TROUTMAN
1725 STODDARD ST
MISSOULA, MT 59802

CHRISTOPHER MAGEE
296 MATHER ST APT #6
OAKLAND, CA 94611

Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Source Name: BIRCH CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BITTERROOT RIVER
BASIN 76H**

Water Right Number: 76H 99726-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:

WILLIAM D PLUMMER
1074 BIRCH CREEK LOOP
CORVALLIS, MT 59828 9547

THEODORE N TROUTMAN
PO BOX 174
HAMILTON, MT 59840 0174

DORINDA H TROUTMAN
PO BOX 174
HAMILTON, MT 59840 0174

THERESA TROUTMAN
1725 STODDARD ST
MISSOULA, MT 59802

CHRISTOPHER MAGEE
296 MATHER ST APT #6
OAKLAND, CA 94611

Priority Date: AUGUST 31, 1963

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 1.14 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 8.00

Source Name: MANMADE PIT, UNNAMED TRIBUTARY OF BIRCH CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENESEW	12	7N	20W	RAVALLI

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: PIT

Subdivision: MOUNTAIN VIEW ORCHARDS TRACT/LOT: 4 BLOCK: 8

WATER FROM BIRCH CREEK IS DIVERTED BY MEANS OF A SUMP LOCATED ADJACENT TO THE SOURCE.

PUMP IS SECONDARY MEANS OF DIVERSION.

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENE SW	12	7N	20W	RAVALLI

Diversion to Reservoir: DIVERSION # 1

Dam Height: 10.00 FEET

Surface Area: 0.11 ACRES

Capacity: 0.57 ACRE-FEET

Period of Use: APRIL 1 TO OCTOBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	8.00		NESW	12	7N	20W	RAVALLI

Subdivision: MOUNTAIN VIEW ORCHARDS TRACT/LOT: 3 BLOCK: 8

Total: 8.00